The State of South Carolina



Office of the Attorney General

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November 22, 1985

Helen T. Zeigler, Legal Counsel Office of the Governor Post Office Box 11450 Columbia, South Carolina

Dear Ms. Zeigler:

You have asked for the opinion of this Office as to whether the crimes of criminal sexual conduct with a minor in the first degree, commission of a lewd act upon a minor, and assault with intent to commit criminal sexual conduct with a minor in the first degree would be considered crimes of moral turpitude. have advised that an individual indicted on several counts of those specified crimes is a member of a municipal commission of public works; you have further asked about the Governor's authority to suspend the indicted individual and appoint a temporary replacement.

This Office has opined, by an opinion enclosed herewith dated October 29, 1981, that the crimes of commission of a lewd act upon a child and assault with intent to commit criminal sexual conduct in the second degree constituted offenses involving moral turpitude because such offenses are among those "which are vile and base in their nature and reprehensible in all of society." Because assault with intent to commit criminal sexual conduct in the second degree is a lesser-included offense of assault with intent to commit criminal sexual conduct in the first degree, cf., State v. Summers, 276 S.C. 11, 274 S.E.2d 427 (1981), it must be included that the greater offense would also involve moral turpitude.

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It is well-established that criminal sexual conduct, known also as rape or carnal knowledge, is a crime involving moral turpitude. Bendel v. Nagle, 17 F.2d 719 (9th Cir. 1927); Ng Sui Wing v. United States, 46 F.2d 755—(7th Cir. 1931); cf., Henry H. v. Board of Pension Commissioners, 149 Cal. App. 3d 965, 197 Cal. Rptr. 636 (1983). Thus, we would conclude that all three crimes for which the individual was indicted would be crimes involving moral turpitude, and the Governor may suspend the individual from public office, pursuant to Article VI, Section 8 of the State Constitution, if the Governor so chooses. As was stated in an opinion of this Office enclosed herewith dated May 5, 1983, "Article VI, Section 8 provides that the Governor 'may' suspend upon indictment for crimes involving moral turpitude. ... [T]he matter ultimately rests in the Governor's discretion, as the provision is not mandatory."

Section 5-31-240, Code of Laws of South Carolina (1976), provides for the filling of vacancies on municipal commissions of public works by appointment by the mayor and city council of a municipality. However, according to the terms of Article VI, Section 8 of the State Constitution, a vacancy would not occur in the office unless and until the official is convicted. Clearly, after conviction of an individual serving as a municipal commissioner of public works, the Governor would not fill the vacancy. Whether the Governor may appoint a temporary replacement during the official's suspension is not addressed by the statute.

There is some authority to the effect that an appointment may be made to fill an office temporarily when the incumbent has been suspended from his official duties See 67 C.J.S. Officers § 79; State ex rel. Carlson v. Strunk, 219 Minn. 529, 18 N.W.2d 457 (1945). However, such temporary appointment is generally authorized by statutory or constitutional provisions, such as Article VI, Section 8 (pertaining to appointment to replace a suspended officer indicted for embezzlement of public funds) or Section 8-1-100 of the Code (appointment to replace a suspended State or county officer indicted for crime). Dacus v. Johnston, 180 S.C. 329, 185 S.E. 490 (1936). We do not find any authority for the Governor or anyone else to appoint a temporary replacement for a municipal official such as a commissioner of public works who has been suspended from office pending the disposition of he indictments, however.

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In conclusion, it is the opinion of this Office that the three crimes discussed above all involve moral turpitude. If the Governor should suspend from office the individual indicted for these crimes, there appears to be no authority to appoint someone else to serve in the office of a municipal commissioner of public works during the officer's suspension. If the individual should be convicted, a vacancy in the office would then exist, to be filled according to the terms of Section 5-31-240 of the Code.

Sincerely,

Patricia D. Petway

Patricia D. Petway Assistant Attorney General

Enclosures

REVIEWED AND APPROVED BY:

Robeřt D. Cook

Executive Assistant for Opinions

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